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Justice Department Detects Discrimination Against Native Americans

John Leo

Asheville, N.C., is the site of a brand-new legal question, never raised before in the annals of political correctness: Should the federal government be involved in determining the mascot or nickname of your local high school sports teams?

Erwin High School in Asheville is being investigated by the Justice Department's Civil Rights Division for using the nicknames “Warriors” and “Squaws” and for having students dressed as Indians at games and pep rallies. The investigation will center on whether the Indian theme creates a racially hostile environment that violates the civil rights of Indian students, according to a letter sent to the school system by Bill Lann Lee, acting head of the Civil Rights Division, and Lawrence Baca, a department attorney. The letter was a response to a complaint from an Asheville nurse, Pat Merzlak, a Lakota Sioux Indian.

Some Indian activists and their allies have campaigned against Indian nicknames for years. Some 600 schools have dropped these names. More than 2500 have not. But so far, the Justice Department has never tried to intervene. This is a first. It is also a fresh example of how broad concepts like “hostile environment” and “racial harassment” are constantly being extended from serious issues to minor and symbolic ones.

On the nickname issue, a reasonable case can be made on either side. Indian activists say that it's wrong to use living people as mascots. But on the college level alone, teams are named for Gaels, Scots, Norsemen, Dutch and the Fighting Irish, as well as Seminoles, Chippewa, Aztecs and the Fighting Sioux. Some nicknames certainly sound like slurs—Redskins and Redmen—but most Americans don't think that Braves, Chiefs, Warriors or famous tribal names fit into this category.

Most Indian names were adopted to indicate that the teams using them have a fierce fighting spirit. This may help promote a stereotype of Indians as savage or hopelessly primitive, particularly when war whoops and tomahawk chops are part of the act at sports events. But many nicknames seem harmless or positive. Some were clearly intended to honor Indian nations or heroes—the Chicago Blackhawks celebrate the Sauk chief Blackhawk, and the Cleveland Indians were named, by a vote of fans, to honor the first Native American major-league star, Lou Sockalexis. And if Indian nicknames are inherently oppressive, why do many Indian and Indian-dominated schools use them?

Debatable issues like this are the proper concern of schools and local communities. When the feds intervened, Asheville had already spent two years and a good deal of money to prepare students at Erwin to make their own decision on a possible change of nicknames and mascots. Students had many discussions and met with the chief of the large Cherokee community in western North Carolina. Student support for a name change, which had reached 44 percent, dropped to 24 percent after the federal intervention.

The Civil Rights Division says it was bound to act after receiving the Merzlak letter, but Asheville was an odd choice for its first nickname intervention. The local community was already addressing the issue. The school usually has only one or two Indian students at a time, and local Indian opinion at the Cherokee community seemed indifferent. The damage claimed in the case was allegedly inflicted on a single Indian student, Rayne Merzlak—Pat's son—who never filed a complaint with the school district and had long since graduated when the feds moved in.

A letter such as the one sent by the Justice Department carries the implied threat of spending the school board into submission. The board chairman says it might cost $500,000 in legal fees to fight back. About $8 million in federal school funding is also at risk, but the Justice Department lacks jurisdiction and would have to go to the Department of Education to cut funds. Or it could go to civil court, seeking damages and an injunction against the school board.

The Civil Rights Division has a reputation of using the threat of costly litigation to get what it wants. In 1993 the division targeted the city of Torrance, Calif., for allegedly discriminating against minorities in written tests for police and firefighting jobs. The city said the tests were fair and widely used, so it dared the division to sue. It did, and last year federal judge Mariana Pfaelzer found the suit so unfounded and frivolous that she ordered the government to cover Torrance's legal costs, about $2 million.

In the Asheville case, the Justice Department asked for so much paperwork that the school district says it will take staff 12 full working days to provide it. One of the requests is for the names and racial identifications of all students who have performed as Indian mascots. This wretched excess seems to ask the board to violate the federal Family Education Rights and Privacy Act. Lawyers for the board say they will refuse to comply.

The division has short-circuited normal democratic debate, intervened clumsily, and attempted to manufacture a grave civil rights violation out of a nickname. Apart from that, it's behaved professionally.